

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Samuel Ross	Team: Squad #1	CCRB Case #: 201503710	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 05/06/2015 2:00 PM	Location of Incident: 152nd Street and Macombs Place	Precinct: 32	18 Mo. SOL 11/6/2016	EO SOL 11/6/2016	
Date/Time CV Reported Mon, 05/11/2015 1:31 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 05/11/2015 1:31 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Jean Francisco	12654	950438	PSA 6
2. POM Justin Lopez	26360	948237	PSA 6

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Nickola Lyte	12430	938897	067 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Justin Lopez	Abuse: PO Justin Lopez questioned § 87(2)(b)	
B.POM Jean Francisco	Abuse: PO Jean Francisco questioned § 87(2)(b)	
C.POM Jean Francisco	Abuse: PO Jean Francisco refused to provide his name and shield number to § 87(2)(b)	
D.POM Jean Francisco	Abuse: PO Jean Francisco seized § 87(2)(b)'s property.	

Case Summary

On May 6, 2015 at approximately 2:10 pm, § 87(2)(b) was smoking a cigar on the corner of Macombs Place and 152nd Street in Manhattan. PO Jean Francisco and PO Justin Lopez of PSA 7 approached § 87(2)(b) asked him what he was smoking, and asked for his ID (**Allegations A and B**). § 87(2)(b) told the officers he was smoking tobacco and handed PO Francisco his ID and a PBA card, provided to him by his sister, PO Nickola Lyte PO Francisco called the phone number provided on the PBA card and spoke briefly with § 87(2)(b). He then handed the phone to § 87(2)(b) who also spoke briefly with his sister. He hung up and handed the phone back to PO Francisco who, with PO Lopez, began to walk away. § 87(2)(b) asked PO Francisco for his name and shield number. PO Francisco did not reply (**Allegation C**). § 87(2)(b) realized that PO Francisco had not returned his PBA card to him, and said, “Officer, please give me back my PBA card.” PO Francisco responded, “I already gave it back to you.” PO Francisco allegedly never returned the card to § 87(2)(b) (**Allegation D**). § 87(2)(b) followed the officers to their vehicle and recorded a video (01. Board Review). § 87(2)(b) watched the officers depart from the scene. He was not arrested or issued a summons.

Mediation, Civil, and Criminal Histories:

- § 87(2)(g), § 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
On June 26, 2015 a request was sent to the Office of the Comptroller for any notice of claim filed by § 87(2)(b). As of the date of this report no response has yet been received.

Civilian and Officer CCRB Histories:

- This is the first CCRB complaint filed by § 87(2)(b) (03. Board Review).
- PO Francisco has been a subject in two previous CCRB cases (04. Board Review). His § 87(2)(g)
- PO Lopez has been a subject in two previous CCRB cases (05. Board Review). In CCRB case # 201302480 it was alleged that he stopped an individual. That allegation was unsubstantiated.

Findings and Recommendations

Allegation A—Abuse of Authority: PO Jean Francisco questioned § 87(2)(b)

Allegation B—Abuse of Authority: PO Justin Lopez questioned § 87(2)(b)

It is undisputed among § 87(2)(b) (06. Board Review), PO Francisco (07. Board Review), and PO Lopez (08. Board Review) that § 87(2)(b) was standing on a public sidewalk smoking a slender cigar approximately four inches long. PO Francisco and PO Lopez approached § 87(2)(b) and asked him what he was smoking. § 87(2)(b) told the officers he was smoking tobacco and threw the butt of his cigar on the ground.

§ 87(2)(b) testified that he held the cigar between his index and middle fingers with his palm facing him. PO Francisco and PO Lopez approached him, and PO Francisco said, “Excuse me.

Come here. I'm a police officer. Let me see your ID." § 87(2)(b) handed his ID and PBA card to PO Francisco, and PO Lopez asked § 87(2)(b) what he was smoking. § 87(2)(b) responded that it was tobacco and then threw the cigar butt on the floor. Neither officer smelled the cigar or asked § 87(2)(b) if he was smoking marijuana.

PO Lopez testified that he and PO Francisco observed § 87(2)(b) from their RMP as they drove by him on Macombs Place. PO Lopez maintained that he smelled the odor of marijuana smoke and believed § 87(2)(b) was smoking marijuana rolled in a brown wrapper. The RMP was thirty to forty feet from § 87(2)(b) when PO Lopez smelled marijuana. The officers parked the RMP, walked back to Macombs Place and 152nd Street, and approached § 87(2)(b) who threw his cigar on the ground. PO Lopez did not smell the odor of marijuana as he approached and did not recall how near to § 87(2)(b) he was when he determined that there was no odor of marijuana. However, PO Lopez acknowledged that he determined there was no odor of marijuana before he made any statement to § 87(2)(b). PO Lopez asked what § 87(2)(b) was smoking and § 87(2)(b) responded that it was tobacco. PO Lopez picked the cigar up from the ground, smelled it, and was satisfied that it was not marijuana. PO Lopez said, "Okay, no problem," and began to walk away with PO Francisco. He never asked § 87(2)(b) for his ID and did not recall if PO Francisco did so.

PO Francisco testified similarly that he and PO Lopez observed § 87(2)(b) from their RMP. § 87(2)(b) was smoking a cigar rolled in a brown wrapper. § 87(2)(b) was holding it between his thumb and index finger, with his palm facing away from him, a manner PO Francisco considered to be typical of marijuana-smoking. § 87(2)(b) was looking around him and PO Francisco believed he was checking to see if anyone was watching him. PO Francisco maintained that the RMP's windows were rolled up so PO Francisco could not smell the smoke emanating from § 87(2)(b)'s cigar. However, he believed the area to be a marijuana-prone location. The officers parked the RMP and then approached § 87(2)(b), dropped the cigar, but this did not raise PO Francisco's suspicion. PO Francisco smelled the smoke and it did not smell of marijuana. PO Francisco said, "I'm Officer Francisco and this is Officer Lopez. What are you smoking?" § 87(2)(b) replied that he was smoking tobacco, and PO Francisco said, "Okay, no problem." He and PO Lopez began walking away toward their RMP. PO Francisco maintained that he never asked § 87(2)(b) for his ID, and that § 87(2)(b) pursued him and PO Lopez in order to give his ID to them.

PO Francisco and PO Lopez questioned § 87(2)(b) in order to determine the legality of his actions, the requirement for which is founded suspicion of criminal activity People v. Debour, 40 N.Y.2d 201 (1976) (09. Board Review). The observation of behaviors known, based on an officer's experience, to be indicative of criminal activity constitutes founded suspicion People v. Legare 2013 NY Slip Op 52122(U) (10. Board Review). PO Francisco testified, contrary to PO Lopez's testimony, that the RMP's windows were rolled up as they passed § 87(2)(b) and that he was unable to smell the smoke emanating from the cigar. PO Francisco, for his part, maintained that the appearance of § 87(2)(b)'s cigar, and the knowledge that § 87(2)(b) was standing in a marijuana-prone location, and especially the manner in which § 87(2)(b) held his cigar and looked around him raised his suspicion. § 87(2)(b) however, denied holding his cigar between his thumb and index finger.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(b)

Allegation C—Abuse of Authority: PO Jean Francisco refused to provide his name and shield number to § 87(2)(b)

§ 87(2)(b) testified that when PO Francisco and PO Lopez began to walk away, he asked PO Francisco, “Officer, what’s your name and shield?” PO Francisco allegedly continued walking without responding.

PO Francisco maintained that he introduced himself as “PO Francisco” and PO Lopez as “PO Lopez” when the officers first approached § 87(2)(b). Further, after he spoke on the phone with PO Lyte § 87(2)(b) sister, § 87(2)(b) asked PO Francisco for his name. PO Francisco claimed that he responded, “It’s Officer Francisco.”

PO Lopez did not recall if § 87(2)(b) ever requested his or PO Francisco’s name or shield numbers or if they were ever provided to him.

The aforementioned video did not capture and § 87(2)(b) s sister did not hear either § 87(2)(b) requesting PO Francisco’s name and shield number or PO Francisco’s identifying himself to § 87(2)(b).

§ 87(2)(g)

§ 87(2)(b)

Allegation D—Abuse of Authority: PO Jean Francisco seized § 87(2)(b) s property.

It is undisputed among § 87(2)(b) PO Francisco, and PO Lopez that § 87(2)(b) handed PO Francisco a PBA card provided to him by his sister.

§ 87(2)(b) maintained that he handed PO Francisco his PBA card along with his ID and that PO Francisco returned his ID to him but never handed back the PBA card.

PO Francisco and PO Lopez maintained that PO Francisco handed § 87(2)(b) his PBA card when he handed him the cell phone.

The video recorded by § 87(2)(b) showed that § 87(2)(b) said, “You never gave it back to me. I would just like my PBA card. You never gave it back to me, Officer.” PO Francisco responded, “I gave it back to you over there,” and pointed off screen. However, the video never shows either individual in the possession of the PBA card.

§ 87(2)(g)

§ 87(2)(b)

Pod: _____

Investigator:	_____	_____	_____
	Signature	Print	Date

Supervisor:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date